

Marbury v. Madison and Judicial Review



- *Judicial review* is the concept of the courts ruling on the constitutionality of actions and laws by the President and Congress.
- This concept was established as part of the constitutional powers of the judicial branch under the Constitution, in the *Marbury v. Madison* case.
- Judicial Act of 1789 gave the Supreme Court the power to issue the *writ of mandamus*, which is an order to the executive office by the judicial branch.
- Having lost the elections of 1800, the lame-duck Federalist congress, in early 1801, created many new federal courts, to be staffed of course by Federalist judges. Adams and Chief Justice John Marshall, the acting Secretary of State, hurried to hand deliver all of the commissions.
- However, there were (at least) four commissions that were not able to be delivered yet, including one to William Marbury.
- Upon being inaugurated in March 1801, Jefferson ordered Madison, his new Secretary of State, to not deliver those remaining commissions. In order to force Madison's hand, Marbury filed suit in the Supreme Court, to get the Court to issue a writ of mandamus, to make Madison deliver the commission.
- Upholding the doctrine of judicial review, the Supreme Court declared that it didn't have the constitutional authority to issue the writ, because that section of the Judiciary Act of 1789 exceeded the powers given to the Supreme Court by the Constitution, and so, that section was unconstitutional.
- In so ruling, it avoided a confrontation with an anti-federalist President who would have loved to disobey any writ that the Supreme Court might have issued; nor did it back away by simply declining to issue a writ, which would have shown that indeed the Court was weak.